

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0124

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to PERKINS–SEX OFFENDER REGISTRY.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. The code counsel shall transfer §§ 22-22-30, 22-22-31, 22-22-31.1, 22-22-31.2,
4 22-22-31.3, 22-22-31.4, 22-22-32, 22-22-32.1, 22-22-33, 22-22-34, 22-22-36, 22-22-38, 22-22-
5 39, 22-22-40, and 22-22-41, and sections 17 to 22, inclusive, of this Act, to a new chapter
6 entitled, Sex Offender Registry, and shall renumber the sections accordingly and adjust all
7 appropriate cross references.

8 Section 2. That § 22-22-30 be amended to read as follows:

9 22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the
10 following crimes regardless of the date of the commission of the offense or the date of
11 conviction:

12 (1) Rape as set forth in § 22-22-1;

13 (2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by
14 an adult and the adult is convicted of a felony;

15 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if
16 committed by an adult;



- 1 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;
- 2 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-22-
3 24.2;
- 4 (6) Sale of child pornography as set forth in § 22-22-24;
- 5 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 6 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 7 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 8 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 9 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent
10 exposure as set forth in § 22-24-1.2;
- 11 (12) Solicitation of a minor as set forth in § 22-22-24.5;
- 12 (13) Felony aggravated indecent exposure as set forth in § 22-24-1.3;
- 13 (14) Bestiality as set forth in § 22-22-42;
- 14 (15) An attempt to commit any of the crimes listed in this section;
- 15 (16) Any crime committed in a place other than this state which would constitute a sex
16 crime under this section if committed in this state;
- 17 (17) Any federal crime or court martial offense that would constitute a sex crime under
18 federal law; ~~or~~
- 19 (18) Any crime committed in another state if that state also requires that anyone convicted
20 of that crime register as a sex offender in that state; or
- 21 (19) If the victim is a minor:
 - 22 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-
23 7.6;
 - 24 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or

(c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29.

Section 3. That § 22-22-31 be amended to read as follows:

22-22-31. Any person who has been convicted ~~whether upon a verdict or plea of guilty or a plea of nolo contendere, or who has received a suspended imposition of sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995, for commission of a sex crime, as defined in § 22-22-30, or any person who is a juvenile fifteen years of age or older adjudicated of a sex crime, as defined in subdivision 22-22-30(1) or (9), or of felony sexual contact, as defined in § 22-22-7.2, shall, within ten days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work, register with the chief of police of the municipality in which the person resides, domiciles, attends school, attends classes, or works, or, if no chief of police exists, then with the sheriff of the county for commission of a sex crime, as defined in § 22-22-30, shall register as a sex offender.~~

The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older shall register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in § 22-22-30(1), 22-22-20(9), or 22-22-7.2, or of an out-of-state or federal offense that is comparable to the elements of these three sex crimes.

The sex offender shall register within ten days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, domiciles, attends school, attends classes, or works, or, if no chief of police exists, then with the sheriff of the county. A violation of this section is a Class 1 misdemeanor. However, any subsequent violation

is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge by certified mail to the Division

1 of Criminal Investigation and to local law enforcement where the person is then registered under
2 this section. Upon receipt of such notice, the person shall be removed from the sex offender
3 registry open to public inspection and shall be relieved of further registration requirements under
4 this section.

5 Section 4. That § 22-22-31.1 be amended to read as follows:

6 22-22-31.1. The Division of Criminal Investigation shall mail a nonforwardable verification
7 form at least once annually to the last reported address of each person registered under § 22-22-
8 31. The person shall return the verification form to the Division of Criminal Investigation within
9 ten days after receipt of any such form. The verification form shall be signed by the person
10 required to register and shall state that the person still resides at the address last reported to the
11 Division of Criminal Investigation. If the person fails to return the verification form to the
12 Division of Criminal Investigation within ten days after receipt of the form, the person is in
13 violation of this section. Nonreceipt of a registration verification does not constitute a defense
14 to failure to comply with this section. A violation of this section is a Class 1 misdemeanor. Any
15 subsequent violation is a Class 6 felony.

16 Section 5. That § 22-22-31.2 be repealed.

17 ~~22-22-31.2. Any person who, as a juvenile, was placed on the sex offender registry may~~
18 ~~petition the circuit court for removal from the registry upon a showing that the person has not~~
19 ~~been adjudicated or convicted of any sex offense for at least ten years and no longer constitutes~~
20 ~~a threat to reoffend.~~

21 Section 6. That § 22-22-31.3 be amended to read as follows:

22 22-22-31.3. Any person who is registered as required by § 22-22-31 and who is employed,
23 carries on a vocation, or attends postsecondary classes at an institution of higher education,
24 institution of higher learning, or technical institute in this state shall, within ten days of any

commencement and within ten days of termination of such enrollment or employment, report to the chief of police or county sheriff where the institution is located and complete a registration update form. A violation of this section is a Class 1 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 7. That § 22-22-31.4 be amended to read as follows:

22-22-31.4. Any person who is subject to the provisions of § 22-22-31 shall annually reregister in the same manner as may be provided by law for initial registration. Such person shall reregister during the calendar month during which the registrant was born. However, if such person has previously registered pursuant to the provisions of § 22-22-31 within ninety days immediately prior to the date of such person's birth, no subsequent reregistration is required pursuant to this section during the current annual reregistration cycle.

A violation of this section is a Class 1 misdemeanor. However, any subsequent violation is a Class 6 felony.

Section 8. That § 22-22-32 be amended to read as follows:

22-22-32. The registration shall include the following information:

- (1) Name and all aliases used;
- (2) Complete description, photographs, and fingerprints;
- (3) Residence, length of time at that residence, and length of time expected to remain at that residence;
- (4) The type of sex crime convicted of; and
- (5) The date of commission and the date of conviction of any sex crime committed;
- (6) Social Security number on a separate confidential form;
- (7) Driver license number and state of issuance;
- (8) Whether or not the registrant is receiving or has received any sex offender treatment;

(9) Employer name, address, and phone number or school name, address, and phone number;

(10) Length of employment or length of attendance at school; and

(11) Occupation or vocation.

Any failure to accurately provide the information required by this section is a Class 1 misdemeanor.

Section 9. That § 22-22-32.1 be amended to read as follows:

22-22-32.1. When a law enforcement official provides information from the sex offender registry, the information shall include the offender's name, address, the type of sex crime convicted of, and the date of the commission of the crime and the date of conviction of any sex crime committed.

Section 10. That § 22-22-33 be amended to read as follows:

22-22-33. Within three days of registering a person pursuant to §§ 22-22-30 to 22-22-39, inclusive, the registering law enforcement agency shall forward the information to the Division of Criminal Investigation. The Division of Criminal Investigation shall maintain a file of all the registrations and shall make them available to state, county, and municipal law enforcement agencies on a twenty-four hour basis. The provisions of §§ 23-5-11 and 23-6-14 do not apply to providing files pursuant to §§ 22-22-30 to 22-22-39, inclusive. The Division of Criminal Investigation file is not open to inspection by the public or any other person other than a law enforcement officer except as specifically provided in §§ 22-22-34.

Section 11. That § 22-22-34 be amended to read as follows:

22-22-34. The Division of Criminal Investigation may make the file available to any regional or national registry of sex offenders. The division shall accept files from any regional or national registry of sex offenders and shall make such files available when requested pursuant

1 to §§ 22-22-30 to 22-22-39, inclusive.

2 Section 12. That § 22-22-36 be amended to read as follows:

3 22-22-36. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
4 who moves to a different residence address shall inform the law enforcement agency with whom
5 the person last registered of the new address, in writing, within ten days. The law enforcement
6 agency shall, within three days of receipt, forward the information to the Division of Criminal
7 Investigation and to the law enforcement agency having jurisdiction of the new residence. A
8 failure to register pursuant to this section is a Class 1 misdemeanor. Any second or subsequent
9 failure to register pursuant to this section is a Class 6 felony.

10 Section 13. That § 22-22-38 be amended to read as follows:

11 22-22-38. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
12 who is discharged or paroled or temporarily released from an institution of the Department of
13 Corrections or the Department of Human Services or from any jail or other facility in this state
14 where the person was confined because of a conviction of an offense as described in § 22-22-30
15 shall, prior to discharge, parole, furlough, work release, or similar program outside the facility,
16 or release, be informed of the duty to register under §§ 22-22-30 to 22-22-39, inclusive, by the
17 institution in which the person was confined. The institution shall require the person to read and
18 sign any forms as may be required by the Division of Criminal Investigation stating that the duty
19 to register and the procedure for registration has been explained. The institution shall obtain the
20 address where the person plans to reside upon discharge, parole, furlough, work release, or
21 similar program outside the facility, or release and shall report the address to the Division of
22 Criminal Investigation. The institution shall give one copy of the form to the person and shall
23 send one copy to the Division of Criminal Investigation and one copy to the law enforcement
24 agency having jurisdiction where the person plans to reside upon discharge, parole, furlough,

1 work release, or similar program outside the facility, or release, and one copy to the office of
2 the state's attorney in the county in which the person was convicted.

3 Section 14. That § 22-22-39 be amended to read as follows:

4 22-22-39. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
5 who is released on probation because of the commission or attempt to commit one of the
6 offenses as described in § 22-22-30 shall, prior to release be informed of the duty to register
7 under §§ 22-22-30 to 22-22-39, inclusive, by the court in which the person was convicted. The
8 court shall require the person to read and sign any forms as may be required by the Division of
9 Criminal Investigation stating that the duty to register and the procedure for registration has
10 been explained. The court shall obtain the address where the person plans to reside upon release
11 and shall report the address to the Division of Criminal Investigation. The court shall give one
12 copy of the form to the person and shall send one copy to the Division of Criminal Investigation
13 and one copy to the law enforcement agency having jurisdiction where the person plans to reside
14 upon release.

15 Section 15. That § 22-22-40 be amended to read as follows:

16 22-22-40. ~~Registration records~~ Any registration record collected by local law enforcement
17 agencies pursuant to this chapter, registration lists provided to local law enforcement by the
18 Division of Criminal Investigation, and records collected by institutions pursuant to § 22-22-38
19 for those persons required to register under the provisions of §§ 22-22-30 to 22-22-39, inclusive,
20 ~~are is a public records record~~ as provided in chapter 1-27.

21 Nothing in this section ~~allows~~ permits the release of the name or any identifying information
22 regarding the victim of the crime to any person other than law enforcement agencies, and such
23 victim identifying information is confidential.

24 Section 16. That § 22-22-41 be amended to read as follows:

22-22-41. Any person who commits any crime as a result of information gained through the sex offender registry or through public information kept pursuant to § 22-22-40 is guilty of a Class 6 felony. Such liability is in addition to any other civil or criminal penalties.

Section 17. Any person required to register under this chapter who is eligible to seek removal from the registry as provided for in section 19 of this Act may petition the circuit court in the county where the person resides for an order terminating the person's obligation to register. If the person seeking removal from the registry is not a resident of this state, but is required to register under other requirements of § 22-22-31, then the person may petition the circuit court of any county of this state where the person is currently registered. The offender shall serve the petition and all supporting documentation on the state's attorney in the county where the offender is currently registered, the office of the prosecutor in the jurisdiction where the offense occurred, and the Attorney General. The Attorney General's office shall respond to each petition to request removal from the sex offender registry.

No person petitioning the court under this section for an order terminating the person's obligation to register is entitled to court appointed counsel or publicly funded witnesses.

Section 18. The petition and documentation to support the request for removal from the sex offender registry shall include:

- (1) The information required for registration of convicted sex offenders in § 22-22-32;
- (2) A detailed description of the sex crime that was the basis for the offender to register;
- (3) A certified copy of judgment of conviction; and
- (4) The offender's criminal record and a detailed description of those offenses.

Section 19. To be eligible for removal from the registry, the petitioner shall show, by clear and convincing evidence, that all of the following criteria have been met:

- (1) At least ten years have elapsed since the date the petitioner first registered pursuant

1 to this chapter. For purposes of this subdivision, any period of time during which the
2 petitioner was incarcerated or during which the petitioner was confined in a mental
3 health facility does not count toward the ten-year calculation, regardless of whether
4 such incarceration or confinement was for the sex offense requiring registration or
5 for some other offense;

6 (2) The crime requiring registration was for:

7 (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory
8 rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one
9 years of age or younger at the time the offense was committed;

10 (b) A juvenile adjudication for a sex crime as defined in §§ 22-22-30(1), 22-22-
11 30(9), or 22-22-7.2 ; or

12 (c) An out-of-state, federal or court martial offense that is comparable to the
13 elements of the crimes listed in (a) or (b);

14 (3) The circumstances surrounding the crime requiring registration did not involve a
15 child under the age of thirteen;

16 (4) The petitioner is not a recidivist sex offender. A recidivist sex offender is a person
17 who has been convicted or adjudicated for more than one sex crime listed in § 22-22-
18 30(1) to (17), inclusive, regardless of when those convictions or adjudications
19 occurred. For purposes of this subdivision, a conviction or adjudication includes a
20 verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo
21 contendere; a suspended imposition of sentence granted under § 23A-27-13,
22 regardless of whether it has been discharged; a deferred prosecution agreement
23 entered by a prosecutor; and a determination made in another state, federal
24 jurisdiction, or courts martial that is comparable to any of these events; and

1 (5) The petitioner has completely and truthfully complied with the registration and re-
2 registration requirements imposed under chapter 22-22.

3 Section 20. If the court finds that all of the criteria described in section 19 of this Act have
4 been met and that the petitioner is not likely to offend again, then the court may, in its
5 discretion, enter an order terminating the petitioner's obligation to register in this state and
6 require the removal of petitioner's name from the registry. However, if the court finds that the
7 offender has provided false, misleading, or incomplete information in support of the petition,
8 or failed to serve the petition and supporting documentation upon the respondent, then the
9 petition may be denied. If the petition is denied, the petitioner may not file a subsequent petition
10 for at least two years from the date the previous petition was denied.

11 Section 21. As used in § 22-22-31, the term, work, includes employment that is full-time or
12 part-time for a period of time exceeding fourteen days or for an aggregate period of time
13 exceeding thirty days during any calendar year, whether financially compensated, volunteered,
14 or for the purpose of government or educational benefit.

15 Section 22. As used in § 22-22-31, the term, attends school, and the term, attends classes,
16 refer to any person who is enrolled on a full-time or part-time basis, in any public or private
17 educational institution, including any secondary school, trade, or professional institution, or
18 institution of higher education.

19 Section 23. That § 23A-28C-1 be amended by adding thereto a NEW SUBDIVISION to read
20 as follows:

21 To be notified of a petition by the sex offender for removal from the sex offender registry
22 and to provide written input with respect to the removal request.